

ORIGINAL Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

42455

MM DOCKET NO. 94-71

File No. BPED-920305ME

File No. BPED-920511MC

MEMORANDUM OPINION AND ORDER

Issued: July 21, 1994 ; Released: July 25, 1994

Under consideration are a "Joint Petition for Approval of Settlement Agreement" filed by Santa Monica Community College District (SMCCD) and Living Way Ministries (LWM) on July 01, 1994; a "Petition on Leave to Amend" filed by SMCCD on July 05, 1994; "Mass Media Bureau's Consolidated Comments on Joint Petition for Approval of Settlement Agreement and Petition for Leave to Amend" filed by the Bureau on July 14, 1994; and a letter dated July 19, 1994 from counsel for SMCCD.

SMCCD and LWM have entered into a settlement agreement to resolve this proceeding and have submitted such agreement for approval. Pursuant thereto, SMCCD has agreed to amend its application to remove the mutual exclusivity. Specifically, SMCCD proposes to amend its application to specify operation on Channel 201B, in lieu of Channel 204B, and to make other related changes in the engineering parameters of its proposed station. The amendment also provides information about SMCCD's governing board as required by paragraphs 2 and 11 of the Hearing Designation Order (HDO) (No. 43638) released June 27, 1994.

The applicants, in support of their agreement, state that the proposed settlement would permit the inauguration of two new noncommercial educational FM services in Mojave and Lancaster, California. Moreover, both applicants declare under penalty of perjury that their respective applications were not filed for the purpose of reaching or carrying out a settlement. The Bureau supports approval of the settlement agreement.

As noted, an integral part of the settlement agreement is the amendment of the SMCCD application. Such amendment substitutes the engineering portion of the Form 301 application, along with a new Engineering Exhibit to reflect the proposal to operate on Channel 201B (in lieu of 204B) in Mojave California. It also reflects the ratification of the original application, as well as all amendments, by a member of the Board of Trustees, as required by the HDO. The Bureau states that technically the amendment complies with all relevant Commission rules and that good cause has been shown for acceptance of the amendment.

The applicants have satisfied the requirements of Section 73.3525 of the Commission's rules which governs settlement agreements of this nature. Specifically, the applicants have timely filed their agreement, they have established that approval of the agreement will serve the public interest, and that neither application was filed for an improper purpose. Thus, the agreement will be approved. Moreover, SMCCD has shown good cause for the acceptance of its amendment.

The HDO designated an air hazard issue against both applicants. Included with the settlement agreement are notifications from the FAA that neither proposal constitutes a hazard to air navigation. Thus, the FAA determination of no hazard with respect to the LWM proposal permits the immediate grant of that application. While SMCCD proposes to utilize the same tower site as specified in its original application, its amended proposal specifies a different frequency and with less power. The earlier FAA approval which SMCCD received requires that any change in frequency or power be reflected in a new application to the FAA. By letter dated July 19, 1994, the Presiding Judge was advised that an appropriate amended application was filed with the FAA on July 01, 1994 and it is anticipated that favorable action by the FAA will be taken within 30 days. When such approval is secured, it will be filed with the Commission. Thus, while the SMCCD application is grantable, final action on such application must be withheld pending receipt of an FAA no hazard determination regarding its amended proposal.

Accordingly, IT IS ORDERED that the "Joint Petition for Approval of Settlement Agreement" filed by the applicants on July 01, 1994 is GRANTED and the settlement agreement is Approved;

IT IS FURTHER ORDERED that the "Petition for Leave to Amend" filed by SMCCD on July 05, 1994 is GRANTED and the amendment is Accepted;

IT IS FURTHER ORDERED that the air hazard issue designated against the LWM application is resolved in favor of the applicant;

IT IS FURTHER ORDERED that the application of Living Way Ministries for a construction permit of a new noncommercial FM station on Channel 205A in Lancaster, California is GRANTED;

IT IS FURTHER ORDERED that the application of SMCCD remains in hearing status pending receipt of a no hazard determination by the RAA regarding its amended proposal, which determination is expected shortly.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in dark ink, appearing to read 'Joseph Stirmer', is written over the printed name.

Joseph Stirmer
Chief Administrative Law Judge

Upon receipt of such determination, there would no longer be any impediment to the immediate grant of the SMCCD application and the application will be granted at that time.